# BOOK REVIEWS.

A SELECTION OF CASES AND STATUTES ON THE PRINCIPLES OF CODE PLEADING, WITH NOTES. By Charles M. Hepburn. Cincinnati: W. H. Anderson & Co. 1901. pp. xxxvi, 651.

This is a book of some six hundred pages, containing a collection of cases designed, in their selection, to illustrate the principles of code pleading; and for employment, as appears upon the title page, in the instruction of students in law schools. The book is divided into three chapters; the first, of four pages upon the Origin, Nature and Extent of Code Pleading; the second, of one hundred and eighty-two upon The One Form of Civil Action, and the third, of four hundred and thirty-nine pages upon the question In Whose Name the Civil Action should be Brought.

Such a collection, of course, has its uses. Any lawyer or student interested in the doctrines of Lawrence *v.* Fox, and the mass of applications, distinctions and exceptions which have grown from and upon that celebrated legal plant, will here find much to his hand, in sufficiently logical arrangement. But it is deemed that the first necessary quality for a collection of cases for students, is symmetry. If this quality be lacking the result must be confusion to the student. He will inevitably acquire a blurred and distorted view of the subject. A lecturer upon anatomy who should prepare a mannikin with an arm of a size suitable only for a monstrous giant, should not wonder if his students acquired impressions of the subject inadequate and erroneous, in which the importance of the arm would be exaggerated. The arrangement of the subjects of this volume as above stated, gives some indication of the violation of the rule of symmetry. The third chapter which occupies more than two thirds of the volume treats of a subject important in the law of contracts, but of subordinate interest in the law of pleading; while the illustrations of the main principles of allegation, causes of action and their statement, election of remedies, denials, defenses and demurrers are either omitted or obscured.

INJUNCTIONS AND OTHER EXTRAORDINARY REMEDIES. By Thomas Carl Spelling. Second Edition. Boston: Little, Brown & Co. 1901. 2 vols. pp. clxii, 821; 823–1894.

The first edition of this work was issued in 1893, and appears to have met with sufficient approval to warrant the publication of this revised and enlarged edition. It has been prepared for practitioners, has a very full table of contents and a satisfactory index, so that any special topic can be readily found, with citation of cases bearing thereupon; and the volumes may be fairly described as a digest of general principles and of the cases, which the busy lawyer,

who has to act promptly in obtaining the remedies of which the work treats, will undoubtedly find useful.

It is disappointing, however, to find no discussion of cases, and no expression of opinion upon points concerning which the decisions of the courts are conflicting; there is manifest a lack of that thorough analysis of the subjects under consideration which should be found in a work of this character; and the classification of topics is by no means satisfactory. The words "temporary," "preliminary" and "interlocutory," as applied to injunctions, are used as synonymous, and one, without previous knowledge of the subject, would be misled by the frequent failure to distinguish between rules which apply to temporary injunctions only and those which apply to both temporary and permanent.

The New York practitioner will certainly have to use the work with caution. The author's statement that a preliminary injunction is only allowed in this State when the plaintiff is entitled, upon his papers, to a permanent injunction, is not correct. Code of Civ. Proc. § 604. New York citations are often of decisions of the inferior courts, when the same questions have been passed upon by the Court of Appeals. The case of Wilkinson *v.* First Nat. Ins. Co., 72 N. Y. 499, is cited at page 199 as deciding that the granting of an injunction restraining proceedings at law does not operate to suspend the statute of limitations, although the decision really stands upon the ground that the injunction in that case did not restrain such proceedings, and that, therefore, there was no suspension of the statute; and whatever is said in the opinion as to the code provision on this subject (present § 406) not relating to limitations fixed by contract must be considered as overruled by Hamilton *v.* Royal Ins. Co., 156 N. Y. 327. At page 871, note 1, Spears *v.* Matthews, 13 N. Y. Supr. Ct. 489, is cited as deciding in New York that "a temporary injunction granted on the application of the plaintiff may, in a proper case, be continued in force after the entry of judgment in favor of defendant and during the pendency of an appeal from such judgment," although that decision was reversed on appeal and the directly opposite doctrine asserted. Spears *v.* Matthews, 66 N. Y. 127. See also Carpenter *v.* Fisher, 18 App. Div. 561. With reference to the power of the courts to issue a mandamus compelling the governor to perform an act which does not involve an exercise of discretion the author states the conflicting views of different States, but, in the body of the text, makes no reference to New York as having settled the question for this jurisdiction, and standing squarely with Michigan and other States for the proposition that the courts have no power by mandamus to compel any act on the part of the governor. People *ex rel.* Broderick *v.* Morton, 156 N. Y. 136. This case is cited several times, but no one, from this work, would learn where New York stands upon this question.

Such instances might be multiplied, but the foregoing are sufficient to show that the volumes should be used as a digest, and that citations upon any questionable point should be carefully verified.